

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA, :
Plaintiff, : NO. 2:23-cr-00176-01
-vs- :
TIMOTHY BRIAN JACKSON, :
Defendant. :

REDACTED TRANSCRIPT

SENTENCING HEARING
BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.,
SENIOR UNITED STATES DISTRICT JUDGE
JUNE 26, 2024

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

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CROSS

REDIRECT

RECROSS

(None)

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RECROSS

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23

27

KAYSHA JACKSON

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WALTER LEE GREENHOWE,
JR.

36

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KAYSHA JACKSON
Recalled

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45

1 P-R-O-C-E-E-D-I-N-G-S 1:40 p.m.

2 THE CLERK: All rise.

3 THE COURT: Good afternoon. Please be seated.

4 THE CLERK: The case before the Court is the
5 *United States of America versus Timothy Brian Jackson*,
6 Criminal Action Number 2:23-00176.

7 Would counsel note their appearances for the record,
8 please.

9 MR. WOLFE: Good afternoon, Your Honor. Jeremy
10 Wolfe on behalf of the United States.

11 THE COURT: Thank you.

12 MR. MOORE: Good afternoon, Your Honor. Rico
13 Moore on behalf of Mr. Jackson, who is here in person, Your
14 Honor.

15 THE COURT: Thank you.

16 THE CLERK: Will the defendant please stand and
17 raise your right hand to be sworn?

18 **TIMOTHY BRIAN JACKSON, DEFENDANT, SWORN**

19 THE CLERK: Thank you.

20 THE COURT: Mr. Moore, have you been over the
21 Probation Department's Presentence Report in this case with
22 Mr. Jackson?

23 MR. MOORE: I have, Your Honor.

24 THE COURT: Have you gone over it with him
25 thoroughly?

1 MR. MOORE: Yes.

2 THE COURT: Can you tell me whether he understands
3 it?

4 MR. MOORE: I believe he does, Your Honor.

5 THE COURT: Did he have a number of questions to
6 ask you about the report?

7 MR. MOORE: He has.

8 THE COURT: And were you able to answer those to
9 his satisfaction?

10 MR. MOORE: I believe I have, Your Honor.

11 THE COURT: Thank you.

12 And, Mr. Jackson, have you read the entirety of the
13 Probation Department's Presentence Report in your case?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you gone over it thoroughly with
16 your attorney, Mr. Moore, as well?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Has he explained to you everything you
19 didn't already understand about it after you first read it?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you believe you understand
22 everything in that report?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Is there anything about it that you
25 don't understand?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Thank you.

3 Let me ask, Mr. Moore, whether there are any objections
4 to the report?

5 MR. MOORE: I believe there is one remaining.

6 THE COURT: And you may be seated, Mr. Jackson.

7 MR. MOORE: I believe there is one remaining, Your
8 Honor. There were actually two. One involved the two-point
9 enhancement for the firearm. I'm going to withdraw that
10 objection, Your Honor. I've actually spoken with the
11 government about it. I found a case that was directly on
12 point.

13 The reason for the objection, Your Honor, is actually
14 to preserve it due to the situation involving *Bruen* and so
15 on and so forth, just in case something would come about, so
16 we could always go back and appeal, if necessary.

17 However, the case I found, they already litigated that
18 issue, and they found it does apply, and it even applies,
19 despite *Bruen*, because it has to do more with not whether or
20 not he can have the gun but whether or not they can actually
21 tell when and how and so forth, Your Honor.

22 THE COURT: So do I understand you to say that the
23 objection to the two-level enhancement for the possession of
24 a firearm in connection with the offense is withdrawn?

25 MR. MOORE: Yes, Your Honor.

1 THE COURT: And so what objection remains?

2 MR. MOORE: The four-point enhancement as to
3 marketing and representation of the fentanyl as something
4 other than what it actually is, Your Honor.

5 THE COURT: You may go ahead with that.

6 But I'm going to ask, can the volume be turned up
7 slightly before Mr. Moore proceeds?

8 MR. MOORE: You need me to move it closer?

9 THE COURT: I'm trying to fix it so you can speak
10 straight out, but please go ahead, if would you.

11 MR. MOORE: Your Honor, our objection is Amendment
12 818 -- I'm sorry -- Section 2D1.1(b)(13), as amended. That
13 enhancement involves the marketing or representation of
14 fentanyl as something other than it is, Your Honor.

15 My understanding, and my reading of that enhancement
16 involves not just -- well, in this case, not a mens rea, but
17 actually an actus reus situation in which the defendant
18 doesn't have to possess -- simply possess, but he has to
19 market or -- and/or misrepresent.

20 In order to do that, Your Honor, there had to be
21 another individual involved or some -- some type of evidence
22 that would show that he actually did so. Not that he
23 intended to do so, or he did so with a guilty mind, which
24 would be just a mens rea situation. This is an actus reus
25 situation.

1 And in that situation, Your Honor, my client simply
2 possessed. He never communicated to anyone that this was
3 anything other than what it is.

4 And therefore, under the -- under the amendment, it
5 doesn't apply. This amendment took effect -- came in effect
6 in November of 2023. But it actually began -- it was
7 actually written in 2018, Your Honor. And I looked for case
8 law, and I haven't really found any. I found a couple
9 cases, but they weren't exactly on point. And one of which
10 is *Marion* -- let's see which district that was -- Northern
11 District of Indiana, Your Honor.

12 It doesn't -- it's not exactly on point, because they
13 decided that case on some other issues, Your Honor, but
14 regardless, I continued to dig. And as I dug, I found -- I
15 went to the transcripts of the 2023, when they were actually
16 putting the amendment back into place, Your Honor. And I
17 think I sent it to -- well, I know I sent to it the
18 government, and I sent it to the Probation Officer, as well.

19 And during the hearings, Your Honor -- I have the
20 transcripts here -- in the public hearing on the proposed
21 amendment to the Federal Sentencing Guidelines, Tuesday,
22 March 7, 2023, page 152. And though it doesn't speak
23 directly to how the amendment is to be interpreted, it gives
24 us an idea where they were going with it, and how it should
25 actually apply, in my opinion, Your Honor.

1 And the person speaking there is a Ms. Freedman. Ms.
2 Freedman is Carla Freedman. She's a U.S. Attorney for the
3 Northern District of New York, and she's also the Executive
4 Branch representative during the hearing, Your Honor.

5 May I approach?

6 THE COURT: I suppose you may do that.

7 MR. MOORE: Your Honor, the conversation actually
8 begins on page 152, but I believe the pertinent section of
9 the transcript is on page 153. And it begins with -- at
10 line 8, and it states: "The difference here is that we are
11 not, and judges are not able to treat the person who
12 knowingly sells a pill that looks like oxycodone that has
13 fentanyl in it any differently than the drug trafficker
14 who's got a little bag of heroin or fentanyl and even
15 indicates that he or she is selling fentanyl to a willing
16 buyer of fentanyl. That person, where to some degree both
17 the seller and the buyer understand the transaction and the
18 danger that they're engaged in."

19 It continues on -- I'm sorry -- can you see that?

20 "Now, when someone is selling a pill and marketing it
21 or representing it or saying nothing at all, but just from
22 the way that the pill looks, the buyer believes that he or
23 she is" -- I'm sorry -- "that he or she is getting a
24 Percocet, but in fact they're getting fentanyl. And that is
25 a huge difference that right now there is nothing that a

1 judge can do, unless somehow the government is able to show
2 that the trafficker -- and in this case it would likely have
3 to be the street-level trafficker."

4 Although it may seem convoluted to some, to me, it
5 clearly states that the marketing and representation has to
6 be active, Your Honor. In other words, they must actually
7 present it to someone as something other than what it is.

8 In other words, the way I understand it is, commit a
9 fraud. In other words, just -- you just can't have these
10 pills and say, well, this looks like something other than
11 what it is; we can apply this enhancement.

12 There has to be a showing that the person actively
13 engaged in deceiving another individual.

14 And I presented this to the Probation Department. I
15 also gave it to the U.S. Attorney's Office. And I believe
16 the U.S. Attorney's Office, their response was simply that
17 she's simply a witness and not a part of the Commission.

18 I believe this lady is beyond a witness. I believe
19 that she is -- and I know she was the U.S. Attorney for the
20 Northern District. She's there as a representative of the
21 Executive Branch. So I think the weight of her statement
22 should be given much more than just being a simple lay
23 witness, an individual from the street, Your Honor.

24 In addition to that, I continued to research, actually
25 late into last night, and I just provided the government

1 with a proffer. I know you're well-read; you read a lot.
2 And the government often puts out primers to help us as
3 attorneys and lay people understand what they've done and
4 what's out there and how things apply and how they don't
5 apply.

6 And I continued to look, because I felt I was missing
7 something. And this actual enhancement was created in 2018.
8 So I went back to 2018 and began to read. And I came
9 forward, and as I got to 2020, I came upon a primer. And
10 that primer is actually written by the Sentencing
11 Commission. And on page 32 of that primer, they address
12 misrepresentation. And the last paragraph, bottom
13 right-hand side -- which may I retrieve that, Your Honor?
14 I'll present that, as well.

15 And, Your Honor, this is the primer from January 2021
16 from the United States Sentencing Commission, and it's page
17 32. And this primer concerns fentanyl and fentanyl
18 analogues. And if we look at the bottom of the page,
19 intentional misrepresentation.

20 And if I may be allowed, Your Honor, it says, some
21 offenders who misrepresented fentanyl and its analogues
22 engaged in particularly aggravating conduct by intentionally
23 misrepresenting these substances to consumers during a drug
24 transaction. The Commission determined that an offender
25 knowingly misrepresented fentanyl or a fentanyl analogue

1 when the offender specifically sold, advertised, or
2 misrepresented one of these drugs as something other than
3 fentanyl or one of its analogues during a drug transaction
4 with a user, buyer, or coparticipant and knew fentanyl or
5 its analogue was present by admission.

6 Your Honor, that -- Your Honor, that is from the
7 Sentencing Commission.

8 And that speaks to an actual sale or misrepresentation
9 by an individual who actually possesses such; not simply
10 possessing or even manufacturing. It speaks to a person who
11 intentionally deceives a person into believing that what
12 they are receiving, it is something other than what they
13 believe it to be.

14 And in this case, Your Honor, Mr. Jackson didn't do so.
15 Therefore, I don't believe that the four-point enhancement
16 should apply.

17 THE COURT: Thank you. Anything further, Mr.
18 Moore?

19 MR. MOORE: Nothing further, Your Honor.

20 THE COURT: Are there any other objections?

21 MR. MOORE: None, Your Honor.

22 THE COURT: Before I turn to the United States to
23 respond, I would ask you, insofar as you are aware, is this
24 report in all respects, Mr. Moore, factually correct?

25 MR. MOORE: I do believe so, Your Honor.

1 THE COURT: All right. And, Mr. Jackson, is this
2 report, that is, the Presentence Report, in all respects
3 factually correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Thank you. And you may be seated.
6 Mr. Wolfe.

7 MR. WOLFE: Thank you, Your Honor. Your Honor,
8 it's the United States' position that the four-point
9 enhancement included in the PSR by the Probation Office for
10 knowingly misrepresenting fentanyl as another substance is
11 properly applied in this case.

12 I've received and reviewed the materials that Mr. Moore
13 just discussed. The Sentencing Commission primer I was
14 given as I sat here in the courtroom just prior to the
15 hearing beginning.

16 The transcript I received yesterday.

17 To sum up both of those documents, I would simply say
18 the transcript involves comments by a witness to a
19 Sentencing Commission hearing. Her comments are in no way
20 binding on the Commission, and in no way alter the plain
21 language of the guideline provision that we're talking
22 about.

23 She was simply making policy arguments about why the
24 mens rea requirement of the enhancement that existed at that
25 time was too strict; and therefore, the enhancement was not

1 applied often enough.

2 This primer that Mr. Moore just discussed, again, is a
3 policy discussion. It does nothing to modify the plain
4 language of the guideline provision that we're talking
5 about, which, again, is properly applied. It requires a
6 knowing misrepresentation or that the defendant knowingly
7 market as another substance a mixture or substance
8 containing fentanyl or an analogue.

9 This was not a simple possession case. The offense of
10 conviction is possession with the intent to distribute.

11 The defendant necessarily admitted by entering a guilty
12 plea that he had the intent to distribute this fentanyl,
13 and, in fact, in the facts stipulation attached to the plea
14 agreement, admitted that he intended to distribute the pills
15 that were found in his apartment.

16 The defendant also imported from China several punch
17 and die kits capable of imprinting pills with "M30"
18 markings. Those M30 markings are well-recognized throughout
19 the law enforcement community and the judicial system as
20 being, essentially, trademarks or the brand markings
21 associated with 30-milligram oxycodone pills.

22 The defendant admitted to acquiring fentanyl powder
23 from outside the United States. And we know from his text
24 messages that he was actually actively seeking out fentanyl.
25 He knew the pills contained fentanyl.

1 It's actually illegal under federal law to even possess
2 the punch and die kits capable of putting "M30" on pills,
3 but yet, he had 23 of them in his apartment turned workshop
4 that was raided by the police on August 29, 2022.

5 He's admitted that he acquired those punch and die kits
6 for the express purpose of making his pills look like
7 legitimately-manufactured 30-milligram oxycodone pills.

8 It's true that the case law regarding this enhancement
9 is not well developed. There is very little case law out
10 there. But Mr. Moore referred to the *Marion* decision from
11 the Northern District of Indiana. And I actually cited that
12 case in the United States' initial Sentencing Memorandum, as
13 well. That case discusses this enhancement. And there is
14 language in that opinion reflecting that the Court felt the
15 very act of placing those "M30" markings on the counterfeit
16 pills qualifies as a knowing misrepresentation. Those "M30"
17 markings are meant to convey to the consumer that they are
18 getting a 30-milligram oxycodone pill; when, in fact, the
19 pills that the defendant was creating and had the intent to
20 distribute to others contained fentanyl or a related
21 substance, Protonitazene, which has a chemical makeup
22 similar to fentanyl and actually is more -- is stronger than
23 fentanyl.

24 The knowledge the defendant possessed thousands of
25 pills containing fentanyl with his "M30" markings; he also

1 placed a box of pills containing the related analogue
2 substance Protonitazene in the mail, intended for the
3 recipient. Thankfully, those pills were intercepted by law
4 enforcement.

5 So based upon all that, it's the United States'
6 position that the defendant, by acquiring illegal punch and
7 die kits for the express purpose of putting "M30" markings
8 on fentanyl pills, knowingly misrepresented those pills as
9 containing something other than fentanyl, and the
10 enhancement is properly applied.

11 THE COURT: What was the contents of the parcel to
12 Connecticut?

13 MR. WOLFE: Your Honor, that parcel contained 399
14 pills that contained Protonitazene, not fentanyl.

15 THE COURT: And the substance, again, was what,
16 did you say?

17 MR. WOLFE: Protonitazene, Your Honor.

18 THE COURT: In its entirety?

19 MR. WOLFE: I believe that's how it's described in
20 the Presentence Report, Your Honor.

21 Your Honor, the laboratory referred to it as
22 Protonitazene.

23 THE COURT: Let me ask you about paragraph 24 of
24 the Presentence Report.

25 MR. WOLFE: Yes, Your Honor.

1 THE COURT: It refers to that parcel and says the
2 following items were recovered.

3 This is recovered on August 12, 2022: A clear
4 heat-sealed wrapper that contained two heat-sealed Ziploc
5 baggies that contained blue tablets marked with a, quote,
6 "M," unquote, and quote, "30," end quote, (Exhibit 6).

7 This item was field tested and yielded a positive
8 result for fentanyl.

9 MR. WOLFE: Yes, Your Honor.

10 THE COURT: That does not seem to be in keeping
11 with what you've just stated that the substance was, I
12 believe you said -- you called it Protonitazene.

13 MR. WOLFE: Your Honor, paragraph 25 of the
14 Presentence Report, the very next paragraph, discusses the
15 lab analysis of the pills from that package. And those
16 pills came back as 399 pills containing Protonitazene -- and
17 perhaps I'm not pronouncing that appropriately.

18 THE COURT: How does that qualify then? Is it the
19 case that those pills stamped with an "M" and a "30,"
20 appeared to be oxycodone, but instead, were something else
21 in this case, Protonitazene? Is that correct?

22 MR. WOLFE: Yes, Your Honor.

23 THE COURT: And characterize Protonitazene
24 further, if you would, please.

25 MR. WOLFE: Your Honor, the Probation Officer in

1 preparing this report spoke to a DEA chemist on April 12th
2 of this year. And the DEA chemist stated -- and this is
3 contained in Footnote 4 on page 22 of the PSR -- he DEA
4 chemist stated that Butonitazene and Protonitazene both have
5 the chemical makeup of fentanyl, and are much stronger than
6 fentanyl.

7 And based upon all that, and the definition of fentanyl
8 analogue set forth in the guidelines, that being that a
9 substance qualifies as a fentanyl analogue if it has a
10 chemical structure substantially similar to fentanyl, it
11 would be the United States' argument that Protonitazene is,
12 in fact, for this purpose, a fentanyl analogue.

13 THE COURT: Thank you. Anything further, Mr.
14 Wolfe?

15 MR. WOLFE: No, Your Honor.

16 THE COURT: Mr. Moore.

17 MR. MOORE: Your Honor, I believe the government's
18 missing the point here. It's not whether or not he
19 possessed. This has to do with whether or not he actually
20 misrepresented or marketed.

21 THE COURT: Well, what he was sending -- the
22 parcel off to Connecticut, what does that amount to?

23 MR. MOORE: It amounts to a possible distribution,
24 but in order to prove a misrepresentation or marketing, you
25 have to, basically, interview the person on the other end

1 and their expectation has to be that what they were
2 receiving is other than what it is.

3 THE COURT: Where does that requirement appear in
4 the guidelines?

5 MR. MOORE: It's not in the guideline, Your Honor.
6 And it's not -- it's not well-represented in any case law,
7 Your Honor. However, in reading and keeping with, I
8 believe, the spirit of the hearings that were held, and with
9 the primer, it's very clear that the requirement is -- and
10 that is what the argument was about at the hearing -- was
11 the fact that it's necessary, and it's not often applied,
12 simply because, one, they have to prove knowledge; two, they
13 also have to show that the individuals were not in agreement
14 as to what they were buying.

15 So, in other words, to make it, you know, quite simple,
16 if a person were to, I guess, have a counterfeit handbag and
17 you understood or a young lady understood she was buying a
18 counterfeit handbag therein, there is no problem.

19 However, if I misrepresent and tell this lady that,
20 yes, this is an original, it is what it looks like, and she
21 buys it as such, and I deceive her, therein lies the
22 problem.

23 And that's the issue that they were trying to address.
24 Not the simple possession of or with the intent to, but the
25 actual --

1 THE COURT: It's not possession -- the defendant
2 would already have surrendered possession of those items
3 when they were sent off in a parcel to Connecticut.

4 MR. MOORE: Right, but the government also has not
5 presented any evidence to show that the individual on the
6 other end, whoever that may have been, that was to receive
7 those items, had been deceived. It's a deception issue,
8 Your Honor.

9 Not whether or not -- so if the person on the other end
10 knew what they were receiving were pills marked with the 30,
11 "M30," and they knew that they were fentanyl or Proto --
12 however you say that word -- and they knew they weren't
13 actually Percocet or otherwise, which was what they were
14 arguing about in the actual hearing, Your Honor, then it
15 applies.

16 It's the deception aspect of it that is the actual
17 danger they were trying to mitigate. And it has to be an
18 active deception, Your Honor; not a perceived or, you know,
19 presumed, Your Honor.

20 THE COURT: Thank you.

21 And, Mr. Wolfe, I'm going to ask you to address that
22 point specifically having to do with the contention of Mr.
23 Moore that someone has to be deceived.

24 MR. WOLFE: Your Honor, these pills -- first of
25 all, whether we're talking about the pills the defendant put

1 into the mail or the pills that the defendant possessed at
2 his apartment, he intended to distribute all of those pills.

3 Those pills were manufactured for the purpose of
4 somebody consuming them at some point. The defendant,
5 himself, according to the PSR, is not a fentanyl user. So
6 somebody else would have been consuming them. And it may
7 not have been the person in Connecticut who was getting the
8 pills. The person in Connecticut who was getting the pills,
9 getting 400 of them, was likely a distributor his or
10 herself.

11 And so the defendant has placed these pills -- or
12 intended to place even more of these pills into the stream
13 of commerce with, essentially, false markings on them, that
14 would give rise to an expectation on the part of the
15 end-user that these are oxycodone. And that's the danger
16 that the Sentencing Commission was really trying to address
17 with this.

18 Possession with the intent to distribute fentanyl can
19 encompass a fairly broad range of actions. It could be
20 powder fentanyl. But, in this case, they were pills
21 specifically stamped for the purpose of making them look
22 like oxycodone.

23 Whether that's the person the defendant's dealing
24 directly with, or somebody further downstream, the fact that
25 those pills are put out there or the defendant intends to

1 put those pills out there, he has already stamped them with
2 "M30"; he's already committed a deceptive act with the
3 intent of deceiving somebody else. And the enhancement
4 should apply to that conduct, Your Honor.

5 THE COURT: Thank you.

6 Mr. Moore, anything further?

7 MR. MOORE:

8 (An off-the-record discussion was held between defense
9 attorney Moore and the defendant.)

10 MR. MOORE: Just briefly. If the Commission
11 wanted this to apply to those who intended to do so, not
12 who -- somebody who actually did so, they would have put it
13 in the enhancement. It would have been written.

14 The plain language of marketing has to do with the
15 presentation to individuals to induce them to act. The
16 plain language of presentation has to do with showing or
17 displaying something or an individual, some thing, Your
18 Honor. And if we used the plain language, given that we
19 don't have very much case law, then this act should be
20 included. And the interpretation should be done so, you
21 know, with limiting.

22 And in that case, Your Honor, then it should be decided
23 on the side of the defendant, Your Honor. That's it.

24 THE COURT: Thank you.

25 And let me ask, as well, at some point here, after the

1 Presentence Report was prepared, you raised the issue of
2 safety valve.

3 MR. MOORE: Yes, Your Honor.

4 THE COURT: And I would simply ask whether or not
5 you have withdrawn that?

6 MR. MOORE: No.

7 THE COURT: And so you may proceed with it at this
8 point.

9 MR. MOORE: Your Honor, I'd like to call a witness
10 at this time, Your Honor.

11 THE COURT: You may.

12 MR. MOORE: I'd like to call Chris Jackson.

13 THE CLERK: Please come to the lectern right here
14 and raise your right hand to be sworn.

15 **CHRISTOPHER JACKSON, DEFENDANT'S WITNESS, SWORN**

16 THE CLERK: Would you please state your full name,
17 and spell your last name for the record.

18 THE WITNESS: Christopher Dewayne Jackson,
19 J-A-C-K-S-O-N.

20 THE CLERK: Thank you. Have a seat over here at
21 the witness stand.

22 MR. MOORE: Your Honor, would you prefer me to ask
23 questions from here or the podium?

24 THE COURT: As you wish.

25 MR. MOORE: I'll use the podium.

DIRECT EXAMINATION

BY MR. MOORE:

Q. Hello.

A. How you doing?

Q. Please state your full name for the record, please.

A. Christopher Dewayne Jackson.

Q. And, Mr. Jackson, what is your employment?

A. I am the assistant vice president of --

THE COURT: Turn that volume up.

(Pause.)

THE COURT: Please go ahead.

THE WITNESS: I'm the Assistant Vice President for Enrollment Management and Student Affairs, and Dean of Students at West Virginia State University.

BY MR. MOORE:

Q. And what is your relation to Timothy Brian Jackson?

A. I'm his oldest brother.

Q. So fair to say you've known him your whole life?

A. All his life.

Q. All his life. And so you grew up in the same house?

A. Yes.

Q. During your upbringing, did you, or Mr. Jackson, your brother, did you ever engage in any sporting activities?

A. Yeah, we played -- I played basketball up until high school. He played football in the midget league, and I

1 think he stopped in junior high. He attempted to play
2 football again in college, but it didn't work out for him
3 too well.

4 **Q.** Okay. During your upbringing, what type of person was
5 Timmy?

6 THE COURT: I don't think we're getting into that
7 at this point. The question here is the one on safety
8 valve.

9 MR. MOORE: Yes, Your Honor.

10 THE COURT: And that's what you need to address.

11 MR. MOORE: I will limit my questions to that,
12 Your Honor.

13 BY MR. MOORE:

14 **Q.** Have you known Timmy to be honest?

15 **A.** Yes.

16 **Q.** Guns -- have you ever known Timmy to have guns?

17 **A.** Yes.

18 **Q.** Have you ever seen him with guns?

19 **A.** Yes. We've gone shooting before at the Kanawha State
20 Forest.

21 **Q.** Did you know him -- what year was that?

22 **A.** I don't know. It's been years. I'm talking about back
23 in college. So I've known Tim to own guns for the better
24 part of 15, 20 years.

25 **Q.** And did you guys ever discuss having firearms?

1 **A.** Yes.

2 **Q.** And what did that discussion entail?

3 **A.** I mean, just to have, I mean, to protect the family, to
4 just be safe.

5 **Q.** Did you ever visit his home?

6 **A.** In --

7 **Q.** South Charleston?

8 **A.** Yes.

9 **Q.** Did you ever see any guns there?

10 **A.** Did I see them there?

11 **Q.** Yes.

12 **A.** No.

13 **Q.** Well, what about the apartment in St. Albans?

14 **A.** Did I see them there? I mean, yes, I've seen them
15 before.

16 THE COURT: Just one moment.

17 BY MR. MOORE:

18 **Q.** Your brother, Timmy, his apartment in St. Albans, did
19 you ever visit?

20 **A.** Yes.

21 **Q.** And what year was this?

22 **A.** He and I were neighbors when I used to visit more
23 frequently. I think he stayed in Apartment 5 or 6, and I
24 was in Apartment 2. So his front door was literally 15
25 yards from mine. So when we lived in that same complex, I

1 used to visit quite frequently.

2 Q. Was this in 2023?

3 A. This was about 11 years ago now.

4 Q. 11 years ago?

5 A. I would go over there.

6 Q. And 11 years ago, did you know Timmy to have any guns?

7 A. Yes.

8 Q. And how often did you visit that apartment then?

9 A. When I lived over there?

10 Q. Yes.

11 A. Daily.

12 Q. While you were at the apartment daily, did you observe
13 any drug activity?

14 A. No.

15 Q. So as far as you know -- or do you know what Mr.
16 Jackson, or Timmy's reasons were for owning firearms?

17 A. Protection, family protection.

18 Q. Family protection. What type of firearms did he own?

19 A. I know handguns; maybe a rifle at the time. Again,
20 this was so many years ago.

21 Q. Various weapons?

22 A. Sure, yes.

23 Q. Did you guys actually use those guns?

24 A. We would go shoot at Kanawha State Forest, from time to
25 time.

1 Q. So nothing illegal?

2 A. No.

3 Q. Sorry, Your Honor. When you guys went to Kanawha State
4 Forest, was anybody else ever present?

5 A. Yes. General public, people. We've gone with my
6 younger brother before. I mean, yes.

7 Q. So it was a family activity?

8 A. Sure.

9 Q. So the purpose of the firearms, as far as you know,
10 were to protect the home?

11 A. Yes.

12 Q. And general shooting, family activities?

13 A. Yes.

14 MR. MOORE: I don't have any more questions, Your
15 Honor. No more questions.

16 THE COURT: Thank you.

17 MR. WOLFE: If I may, Your Honor?

18 **CROSS-EXAMINATION**

19 **BY MR. WOLFE:**

20 Q. Mr. Jackson, when was the last time that you went over
21 to your brother's apartment on [REDACTED] Street in St. Albans,
22 Apartment 5?

23 A. It's been a few -- it's been a while. Actually, I
24 think the last time I went is when I went to shower when we
25 had that chemical spill in the city. So that was some years

1 ago. I think that was the last time I was over there.

2 **Q.** Would that have been around 2013, 2012?

3 **A.** Whenever, yes. Whenever it was.

4 **Q.** Approximately 10 years ago?

5 **A.** Sure.

6 **Q.** And when you were over at the apartment, you said you
7 saw guns when you were there?

8 **A.** No. I knew -- I knew they were there. I mean, it's
9 not like they were just laying on the couch.

10 **Q.** Understood. You knew they were there, but you didn't
11 see them sitting out?

12 **A.** Correct.

13 **Q.** And did you have any knowledge of, prior to your
14 brother's arrest, his drug activity?

15 **A.** No, sir.

16 MR. WOLFE: No further questions, Your Honor.

17 MR. MOORE: No questions, Your Honor.

18 THE COURT: May Mr. Jackson be excused?

19 MR. MOORE: Yes, Your Honor.

20 THE COURT: Thank you, sir.

21 MR. MOORE: Your Honor, I'd like to call my next
22 witness, Your Honor.

23 THE COURT: Go ahead.

24 MR. MOORE: I'd like to call Kaysha Jackson, Your
25 Honor.

KAYSHA JACKSON - DIRECT

1 THE CLERK: Please raise your right hand to be
2 sworn.

3 **KAYSHA JACKSON, DEFENDANT'S WITNESS, SWORN**

4 THE CLERK: State your full name, and spell it for
5 the record.

6 THE WITNESS: Kaysha Jackson, J-A-C-K-S-O-N.

7 THE CLERK: Could you please say that a little
8 louder?

9 THE WITNESS: K-A-Y-S-H-A Jackson.

10 THE CLERK: Thank you. You can have a seat at the
11 witness stand.

12 **DIRECT EXAMINATION**

13 **BY MR. MOORE:**

14 **Q.** Hello. Could you please state your full name for the
15 record?

16 **A.** Kaysha Jackson.

17 **Q.** And how old are you, Ms. Jackson?

18 **A.** 40.

19 **Q.** Where are you employed?

20 **A.** West Virginia State University.

21 **Q.** And what is your relationship to the defendant?

22 **A.** He is my husband.

23 **Q.** And how long have you guys been married?

24 **A.** Seven years on the 24th.

25 **Q.** And how long were you guys in a relationship?

1 **A.** Since 2004.

2 **Q.** So during this relationship, say, beginning in 2004,
3 did you visit Mr. Jackson's home?

4 **A.** Yes.

5 **Q.** And where was that at the time?

6 **A.** Initially, it was his grandmother's home in Dunbar,
7 West Virginia.

8 **Q.** There ever come a time in which Mr. Jackson moved to
9 St. Albans?

10 **A.** Yes.

11 **Q.** And do you know around about the year?

12 **A.** I can't recall. I can't recall.

13 **Q.** But you were aware he moved to St. Albans?

14 **A.** Yes.

15 **Q.** And did you visit that apartment?

16 **A.** Yes.

17 **Q.** How frequently?

18 **A.** Almost daily, as a new girlfriend.

19 **Q.** Almost daily. While you were there, did you happen to
20 see Mr. Jackson with any firearms?

21 **A.** Yes.

22 **Q.** How often?

23 **A.** I knew that he would usually go shooting with his
24 brothers and stuff like that, or his best friend, so it was
25 during those times whenever they were getting ready to go to

1 the park.

2 Q. And while you were at his apartment, did you see any
3 illegal activity?

4 A. No.

5 Q. Okay. Obviously, as his wife, you are aware of his
6 arrest, correct?

7 A. Correct.

8 Q. And you know that took place at that same apartment,
9 correct?

10 A. Correct.

11 Q. Had you been to that apartment in -- when was the last
12 time you had actually been to that apartment?

13 A. Prior to the arrest?

14 Q. Prior to the arrest?

15 A. Probably a year before.

16 Q. All right. And you guys are married, correct?

17 A. Correct.

18 Q. And you live together?

19 A. Yes.

20 Q. And where did you live?

21 A. In South Charleston.

22 Q. And in your home, did you have firearms?

23 A. Yes.

24 Q. How many?

25 A. Two or three, I believe.

1 Q. Are you aware of where these firearms came from?

2 A. Yeah.

3 Q. And where was that?

4 A. Some of them were purchased, like, at the gun show that
5 they have, like, in St. Albans. I forget the name of the
6 store. Some of them were gun show, and others were
7 purchased from someone else.

8 Q. Were you ever present during these purchases?

9 A. Yes.

10 Q. Did you guys ever discuss having firearms in your
11 house -- in your home or at the apartment?

12 A. The apartment, yes. The firearms for the apartment
13 came after there was a break-in that -- there was several
14 break-ins in that complex. And then we discussed getting a
15 firearm, basically, to protect the house.

16 Q. Okay. And what about the firearms in your home?

17 A. It was the same thing. Although, my home, we didn't
18 have any break-ins, but it was kind of the same thing.

19 Q. Did you ever participate in shooting activities?

20 A. No. But he did show me how to load, unload, basically,
21 safety if I was at home by myself.

22 Q. Were you ever aware of Mr. Jackson obtaining his
23 license to carry a firearm?

24 A. Yes. Actually, I think we all kind of went and did it
25 at the same time.

1 Q. So you have your license to conceal?

2 A. It's no longer valid, but, yes, I had it at one point.

3 Q. So you went with your husband and others to obtain that
4 license?

5 A. Correct.

6 Q. At any time, did he ever discuss any illegal activities
7 with you?

8 A. No.

9 Q. Okay. So, prior to his arrest, you said you had not
10 been at the apartment for at least a year?

11 A. It may be less than that, but, yeah.

12 Q. So you weren't aware -- you can't specifically state
13 that you saw any firearms prior to his arrest for at least
14 six months to a year?

15 A. Correct.

16 Q. So would it be fair to say that your husband possessed
17 these firearms in order to protect his family and home?

18 A. Yes.

19 Q. You guys have kids?

20 A. Yes, we have two.

21 Q. Two. Has he ever shared his knowledge about firearms
22 with your kids that you are aware of?

23 A. Absolutely.

24 Q. Which one?

25 A. Both of them, actually. The youngest one doesn't quite

1 understand, but we always talk about gun safety; basically,
2 what numbers to call when things happen. But the oldest
3 one, he did the same thing that he did with me, showing him,
4 basically, this is a gun, you know, this is what it looks
5 like, this is what you use it for, that type of thing, yeah.

6 **Q.** Did he store these guns in a specific place?

7 **A.** Away from the kids. They weren't in the open. In the
8 bedroom, yeah.

9 MR. MOORE: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. WOLFE:**

12 **Q.** Ms. Jackson, you just testified that your husband would
13 often keep firearms in the bedroom. Are you referring to
14 [REDACTED] Way or your family residence?

15 **A.** Both, and St. Albans.

16 **Q.** When was the -- you said it had been a year -- prior to
17 your husband's arrest, you said it had been about a year
18 since you had been at the apartment?

19 **A.** I can't say that it's -- we started having issues. So
20 saying a year might be a bit much. But I know we started
21 having issues, and then we separated.

22 **Q.** And when you were over there, approximately, a year
23 prior to his arrest, do you recall seeing any guns there at
24 that time?

25 **A.** Not in the open, but I know they were there.

1 MR. WOLFE: No further questions, Your Honor.

2 MR. MOORE: I have no more questions for Ms.

3 Jackson.

4 THE COURT: Any further questions, Mr. Moore?

5 MR. MOORE: No, Your Honor.

6 THE COURT: And may Ms. Jackson be excused?

7 MR. MOORE: Yes, Your Honor.

8 THE COURT: Thank you, ma'am.

9 THE WITNESS: Thank you.

10 MR. MOORE: One second, Your Honor.

11 (Defense attorney Moore conferring off the record.)

12 MR. MOORE: Your Honor, I have one last witness,

13 Lee Greenhowe, Your Honor.

14 THE COURT: Again, please.

15 MR. MOORE: Lee Greenhowe.

16 THE CLERK: Please come to the lectern and raise
17 your right hand to be sworn.

18 **WALTER LEE GREENHOWE, JR., DEFENDANT'S WITNESS, SWORN**

19 THE CLERK: State your full name, and spell your
20 last name for the record.

21 THE WITNESS: Walter Lee Greenhowe, Jr.,

22 G-R-E-E-N-H-O-W-E.

23 THE CLERK: Thank you. You can have a seat at the
24 witness stand.

25 THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. MOORE:

Q. Mr. Greenhowe, would you please state your full name for the record?

A. Walter Lee Greenhowe, Jr.

Q. And where are you employed?

A. I work for State Farm Insurance.

Q. And where do you reside?

A. Baltimore, Maryland.

Q. And are you familiar with the defendant, Timothy Brian Jackson?

A. Yes. Timmy has been my best friend probably since we were third grade.

Q. Okay. Are you familiar with Mr. Jackson owning firearms?

A. Yes. I don't exactly recall. I'm pretty sure that we went to the class together to obtain our concealed permit, or, if not, I gave him the information for the class so he could go slightly afterwards, because somehow worked with -- State Farm at the time had the class; they were putting on the class.

Q. Do you recall the year?

A. It would have to be 2005 or '6. It was when I was still living in West Virginia. And I've been gone from West Virginia for probably 15 years.

1 **Q.** Did you ever have occasion to visit Mr. Jackson in his
2 home?

3 **A.** Yes. I've visited him in every home he's ever lived
4 in, as far as the apartment, the home they lived in
5 together, his grandmother's house.

6 **Q.** The apartment, would that be the one in St. Albans?

7 **A.** Yes, sir.

8 **Q.** And since 2005, how many times would you say you
9 visited him in that home?

10 **A.** A lot. I mean, I don't know the exact amount. When I
11 would come home, I would go -- always visit him, whether he
12 was there or at the other house. So, numerous times. I
13 mean, it's -- probably five or six times a year.

14 **Q.** Okay. So is it fair to say you guys would hang out at
15 that apartment?

16 **A.** We would hang out there and everywhere else, yeah.

17 **Q.** Would other people hang out at the apartment, as well?

18 **A.** Yes. I -- fraternity brothers, other friends, yeah.

19 **Q.** While you were at the apartment, did you have the
20 occasion to see any firearms?

21 **A.** From my recollection, I don't remember seeing any
22 firearms. I knew they were there. I've seen them when we
23 -- I think his brother mentioned, when we go to Kanawha
24 State Forest, I've been up there several times with him to
25 target practice. But I don't -- I knew they were there. I

1 knew he possessed them. When we were in college, he
2 possessed them, I think. But, no, it was -- I never
3 actually laid eyes on them. They were never out in the open
4 or never on the couch or they were never anywhere like that.

5 **Q.** But you have seen Mr. Jackson with firearms?

6 **A.** Yes.

7 **Q.** Do you know what type of firearms?

8 **A.** If I recall, he had a AK-47. Mr. Jackson also had a
9 Glock .40. I think we have one similar to each other. I
10 want to say a Smith & Wesson -- I don't know exactly what
11 they were, but we had several. And I still possess some.
12 And I still have my concealed permit for Maryland.

13 **Q.** His home in South Charleston, were you aware of
14 firearms being there?

15 **A.** Yes.

16 **Q.** Did you guys ever discuss any reasoning behind owning
17 firearms?

18 **A.** A lot of it was for protection, but, also, just for
19 recreation, you know, just to go shoot, have fun, go target
20 practice.

21 **Q.** At any time, did Mr. Jackson ever mention owning
22 firearms to protect the drug trade?

23 **A.** No. I never even seen Mr. Jackson have a firearm
24 outside of his house, besides when we were transporting --
25 you know, going to the range. Never seen him flash it, pull

1 it out, anything of that.

2 Q. Okay. So he never mentioned having to protect his
3 apartment or his home due to illegal activities?

4 A. No. Never.

5 Q. Okay.

6 MR. MOORE: No more questions, Your Honor.

7 THE COURT: Cross-Examination.

8 MR. WOLFE: Just briefly, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. WOLFE:**

11 Q. Sir, did Mr. Jackson ever discuss drug dealing or
12 fentanyl with you?

13 A. No, sir.

14 MR. WOLFE: No further questions, Your Honor.

15 MR. MOORE: No further questions, Your Honor.

16 THE COURT: And may he be excused?

17 MR. MOORE: Yes, he may, Your Honor.

18 THE COURT: Thank you, sir.

19 THE WITNESS: Thank you.

20 THE COURT: Any further evidence on safety valve?

21 MR. MOORE: One second, Your Honor.

22 (An off-the-record discussion was held between defense
23 attorney Moore and the defendant.)

24 MR. MOORE: I don't think we are going to call any
25 more witnesses, Your Honor.

1 THE COURT: Thank you.

2 Does the government have any witnesses on the point?

3 MR. WOLFE: No, Your Honor.

4 THE COURT: Mr. Moore, you raised one other issue
5 that I think you wish considered for either a departure or
6 variance, and it has to do with coercion.

7 MR. MOORE: Yes, Your Honor.

8 THE COURT: Do you have any evidence that you wish
9 to submit?

10 MR. MOORE: Besides the calling of Mr. Jackson's
11 wife as a witness to testify, Your Honor, that would be the
12 only evidence I could submit at this time.

13 THE COURT: And so do you wish to recall her for
14 that purpose?

15 MR. MOORE: Yes, Your Honor.

16 THE COURT: You may do so.

17 THE CLERK: Please come to the lectern.

18 **KAYSHA JACKSON, DEFENDANT'S WITNESS RECALLED, SWORN**
19 **PREVIOUSLY**

20 THE COURT: Ms. Jackson, you've already been
21 sworn. You remain under the same oath.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you.

24 THE WITNESS: Thank you.

25

DIRECT EXAMINATION

BY MR. MOORE:

Q. Ms. Jackson, you've already stated your full name and the particulars for the record.

What I want to ask you about now has to do with coercion. And with that, I'll be -- do you understand what coercion means?

A. Yes.

Q. Okay. Did there ever come a time in which Mr. Jackson made you aware that he was in fear?

A. This was immediately after the arrest.

Q. How did he make you aware?

A. Well, the agent showed up at my home, also. And I was there with my child. So after everything settled, we had to sit down and have a discussion, because I was unaware of anything like this going on. We sat down. We had a discussion. He basically broke down crying and told me everything that was going on at the time. And he also showed me some things on his phone.

Q. Was that right after, or some time down the line, the things on the phone?

A. We talked about the issue, what happened, but then a few -- maybe days after, weeks after, is when I saw the actual video.

Q. When you say video, what video are you referring to?

1 **A.** So there was a very graphic video that I saw that was
2 sent of, basically, people being mutilated; someone having
3 their head cut off, type of thing.

4 **Q.** Did he make you aware of who sent this video?

5 **A.** Yes.

6 **Q.** And who did he say -- who did he tell you sent the
7 video?

8 **A.** The cartel.

9 **Q.** Did there ever come a time in which you were personally
10 scared?

11 **A.** Yes, definitely.

12 **Q.** Please describe the situation or that situation.

13 **A.** So after everything happened -- I live in a cul-de-sac.
14 So every car that comes down, we know. But there was
15 several cars that started coming down. And no one speeds in
16 that street because it's a cul-de-sac, and we have kids on
17 that street. But several cars started coming down that
18 street speeding and going around the cul-de-sac and coming
19 back up, and kind of stopped in front of my home, and then
20 go. And this started happening throughout the day.

21 So I said to my sister that I was going to get some
22 Ring cameras and install them, which I did. And in doing
23 so, I was able to see over and over again the cars that
24 would come by and stop, just sit, and then go. There were
25 also several phone calls that kept coming in.

1 Q. Did you ever report the automobile activity?

2 A. Yes. I tried to call -- I contacted Agent Brumfield.

3 Q. Did you speak to him?

4 A. I did. I spoke to him and -- I told him I needed to
5 talk to him, because there was several things that were
6 going on, and I was afraid, and things like that. And he
7 told me to contact my lawyer.

8 Q. Did there ever -- were there any other incidents that
9 caused you to be afraid?

10 A. Yes. There were several phone calls, daily.

11 Q. Do you know any of the phone numbers?

12 A. No. It would be different numbers every time.

13 Q. Did you ever answer the phone?

14 A. I did not. I did not answer the phone, because I was
15 afraid of answering a call and getting wrapped into
16 something that I would not be able to get out of.

17 Q. What would make you think that these calls were from
18 someone -- that they would pertain to your husband's
19 situation?

20 A. Because they were all coming from the same location.
21 They were all numbers from Arizona, which is where the
22 trouble started. And, like I said, it was several times a
23 day. And, I mean, not -- every time that they came through,
24 I would take a screenshot of the phone and forward them to
25 you, just, you know, asking for help, asking for protection.

1 I was afraid. I was afraid I was being followed. So, yeah.

2 **Q.** Did your husband ever convey to you that he felt
3 coerced into his actions?

4 **MR. WOLFE:** Objection, Your Honor. The question
5 calls for hearsay.

6 **THE COURT:** Sustained.

7 **BY MR. MOORE:**

8 **Q.** Did he ever convey to you that he was afraid?

9 **A.** Yes.

10 **MR. WOLFE:** Objection, Your Honor.

11 **THE COURT:** I just sustained the objection to the
12 same question, Mr. Moore.

13 **BY MR. MOORE:**

14 **Q.** Did your husband ever have a conversation with you
15 about the people from Arizona?

16 **MR. WOLFE:** Objection, Your Honor.

17 **THE COURT:** Sustained.

18 **BY MR. MOORE:**

19 **Q.** Did your husband ever have any conversations with you
20 concerning his arrest afterwards?

21 **MR. WOLFE:** Objection, Your Honor.

22 **THE COURT:** Sustained.

23 And unless you have further questions beyond that which
24 you've asked now four times, you may surrender the witness.

25 **MR. MOORE:** I will do so willingly, Your Honor.

1 THE COURT: Very good.

2 MR. MOORE: Thank you.

3 THE COURT: Ms. Jackson, you mentioned an agent to
4 whom you had spoken. Could you repeat the name?

5 THE WITNESS: Brumfield.

6 THE COURT: How would you spell it?

7 THE WITNESS: B-R-U-M-F-I-E-L-D, Brumfield.

8 THE COURT: Something like Brumfield?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 THE WITNESS: Yes.

12 **CROSS-EXAMINATION**

13 **BY MR. WOLFE:**

14 **Q.** Ms. Jackson, all the events that you described just
15 here speaking with Mr. Moore, those all started when your
16 husband got arrested; is that correct?

17 **A.** Correct. At least, I noticed after, yeah.

18 **Q.** All the events, all the people in front of the
19 cul-de-sac, all the calls, all of that was after his arrest?

20 **A.** Correct.

21 MR. WOLFE: No further questions, Your Honor.

22 MR. MOORE: No further questions, Your Honor.

23 THE COURT: And may Ms. Jackson be excused once
24 again?

25 MR. MOORE: Yes, she may.

1 THE COURT: Thank you, ma'am.

2 THE WITNESS: Thank you.

3 THE COURT: Any further evidence on that issue?

4 MR. MOORE: No, Your Honor.

5 THE COURT: Does the government have any evidence
6 on the issue?

7 MR. WOLFE: No, Your Honor.

8 THE COURT: The Court will ask the parties to
9 argue the point.

10 And then I'm going to ask you to go back to argue,
11 after that's completed, the safety valve issue.

12 So commencing with this point on coercion, you're the
13 proponent of that, and you may make such statement as you
14 see fit at this point, Mr. Moore.

15 MR. MOORE: Your Honor, may I ask a question,
16 please?

17 THE COURT: Pardon me?

18 MR. MOORE: There is also a proponent -- there was
19 also a motion concerning aberrant behavior, Your Honor. Are
20 we going to address that prior to the argument or --

21 THE COURT: With respect to aberrant behavior, I
22 think you can develop that in the course of your statement
23 to the Court in behalf of the defendant.

24 MR. MOORE: Thank you, Your Honor.

25 THE COURT: That is, unless you have evidence on

1 the point. If you have evidence on that aberrant behavior,
2 we can consider that. But let's address safety valve --
3 well, no, let's address coercion now, such as what we've
4 just heard.

5 MR. MOORE: Your Honor, you read my motion, so I
6 know you're well aware of what the argument is as far as
7 coercion. Your Honor, you know what it is. You also know
8 there is a complete defense in coercion and an incomplete.

9 And in this case, I believe it would be an incomplete
10 defense. I believe that it is enough to gain Mr. Jackson a
11 variance, Your Honor.

12 Mr. Jackson entered into this, according to the PSR,
13 and according to the statement he gave when he was arrested,
14 Your Honor, into this situation -- or agreement with these
15 people, from Day One, under coercion. When he first spoke
16 with these people, he spoke with them with a gun on the
17 table.

18 He entered into a situation --

19 THE COURT: Well, you're saying he spoke to them
20 with a gun on the table. Where does that appear in the
21 evidence?

22 MR. MOORE: It was based upon Mr. Jackson's
23 debriefing, Your Honor.

24 THE COURT: Please go ahead.

25 MR. MOORE: And that's how he entered into this

1 agreement, Your Honor. His wife just testified to that.

2 THE COURT: You understand the Court is not
3 considering the debriefing, because it has no part of it in
4 the record.

5 MR. MOORE: I understand, Your Honor. His wife
6 testified that he explained to her that he was scared. He
7 explained to her that the beginning of the problems came
8 from Arizona. She's testified that there were various cars
9 that she wasn't aware of driving up and down her street.
10 She even went so far as to attempt to contact the
11 authorities and ask for help. She went so far as to send me
12 copies of the screenshots, which --

13 THE COURT: You say, she attempted to contact the
14 authorities for help?

15 MR. MOORE: Yes.

16 THE COURT: There is no evidence that Mr. Jackson
17 did so; that is, her husband did so?

18 MR. MOORE: No. No, Your Honor.

19 THE COURT: Please go ahead.

20 MR. MOORE: No. And I'm not going to say that he
21 did, Your Honor, because he didn't. But she did screenshot
22 the calls. And she did see the video. And he did make her
23 aware of what the video -- who the video -- who sent the
24 video, Your Honor.

25 THE COURT: Now, all this is taking place after

1 the arrest?

2 MR. MOORE: After the arrest, Your Honor. The
3 video action -- it was seen by his wife after the arrest.
4 But it existed prior to, Your Honor.

5 I understand that coercion generally has to do with an
6 individual being verbally threatened or something, some
7 evidence that an individual can put on the table and say,
8 this note was sent to me, or, this message was sent to me,
9 but also understand that coercion and being forced into
10 something is generally something that is done in the dark.
11 So there is not often hardcore evidence, text messaging, and
12 so forth in these situations, Your Honor.

13 And given the magnitude, scale, and scope of the
14 organizations that he believed he was dealing with, Your
15 Honor, I don't think it's far-fetched to believe that based
16 upon even the actions that were taken afterwards, and given
17 his background and his history and so on and so forth, that
18 he operated without being coerced or under duress, Your
19 Honor.

20 I believe the entire situation was a situation which he
21 was forced into, and that they continued to force -- to
22 attempt to force the situation by intimidating his family
23 after his arrest, Your Honor.

24 And I believe if you take a look at that evidence and
25 the totality of the circumstances and all the evidence that

1 is presented to you in this case as a whole, I think that he
2 qualifies for a variance in this case, Your Honor.

3 That is it.

4 THE COURT: Thank you.

5 Will you address the coercion point?

6 MR. WOLFE: Yes, Your Honor. The defendant's
7 demonstrated no entitlement or justification for a downward
8 variance based on coercion.

9 All the evidence that he's produced has been of events
10 taking place after his arrest. He was involved in an
11 offense and relevant conduct in this case, beginning,
12 approximately, a year prior to his arrest.

13 This was a long-running operation. And all the
14 evidence that we're hearing are things happening after his
15 arrest. Even being as charitable as possible to those
16 things; they were vague.

17 And, again, the offense was completed by the time
18 anybody drove by Mr. Jackson's house, regardless of who they
19 were, by the time Mr. Jackson's wife got any missed calls,
20 regardless of who they were -- and we don't know who they
21 were, because none of the calls were answered -- there has
22 been no evidence adduced as to who those people were.

23 We don't know who the people were that were driving by
24 the house. We don't know who the people were who were
25 calling, whether they had any connection to this offense or

1 to the defendant. And even if they did, all of that
2 happened after the offense was completed.

3 It has nothing to do with his motivation for committing
4 the offense. He's demonstrated no entitlement to a downward
5 variance on this point, Your Honor.

6 THE COURT: What, if anything, do you make of the
7 evidence with respect to the video?

8 MR. WOLFE: Your Honor, the defendant's wife
9 viewed the video after his arrest, but we have no evidence
10 as to the source of that, other than a hearsay statement;
11 and we don't know that the video was sent to him before his
12 arrest or any impact it may have had on him.

13 And so the defendant's demonstrated, again, no
14 entitlement to a variance on this point.

15 THE COURT: Thank you.

16 MR. MOORE: Your Honor?

17 THE COURT: Continuing to conclude coercion.

18 MR. MOORE: Your Honor, we admit that Ms. Jackson
19 has testified to things that she saw afterwards, because,
20 quite frankly, her husband kept her out of it. However, the
21 video that she has alluded to was in the possession of the
22 United States Government. They failed to download it. It's
23 not our fault.

24 In addition, when you take a look at the revised PSR,
25 page 21, paragraph -- adjustment for acceptance of

1 responsibility, page 21, top of the page, in the PSR, Mr.
2 Jackson has actually told them that the way he became
3 involved in this was selling defective phones to a Mexican
4 cartel, and they required him to make good on the issue that
5 they caused them. That is at the top of the page, of page
6 21.

7 So the fact that she can only testify to what she knew
8 about after the fact is just to bolster the allegations or
9 the testimony, the facts that Mr. Jackson gave when he was
10 actually asked about the situation in his PSR, Your Honor.

11 So this is not something that came about afterwards.
12 It's just something she knew about afterwards. And she
13 supplied information on the ongoing coercion and threats
14 that were made, Your Honor.

15 THE COURT: I believe that covers that topic. And
16 I'll ask you -- unless you have something further on the
17 point, Mr. Wolfe?

18 MR. WOLFE: Your Honor, I would just point out
19 that the acceptance of responsibility statement that Mr.
20 Moore pointed to at the top of page 21 of the PSR doesn't
21 say anything about the defendant being forced to do
22 anything; doesn't say anything about him being coerced to do
23 anything.

24 The quote, which begins on page -- on Line 4, of the
25 acceptance of responsibility statement, states, quote,

1 "I agreed to sell the drugs that they would supply in order
2 to repay the costs of the phones and money they allege they
3 lost due to defective phones."

4 Again, that's not evidence of coercion, Your Honor.

5 THE COURT: With respect to that same matter, the
6 defendant's phone was seized, as I understand it, correct?

7 MR. WOLFE: Several phones were seized from the
8 defendant's possession, Your Honor.

9 THE COURT: Pardon?

10 MR. WOLFE: Several phones, Your Honor.

11 THE COURT: And what did the examination of those
12 phones show that would support coercion?

13 MR. WOLFE: Nothing, Your Honor. The phone that
14 was -- the United States sought a search warrant for a
15 Samsung cell phone that I believe was in the defendant's
16 possession when he was arrested on August 29th, 2022. And a
17 thorough examination of that phone was conducted. There was
18 no evidence of any communications with any cartel members or
19 associates in that phone.

20 The relevant text messages that were contained in that
21 phone were with suspected Chinese suppliers, and those are
22 the text messages that are set forth in the PSR. There were
23 several other phones that were not downloaded, Your Honor.
24 Those were all returned to the defendant.

25 THE COURT: Thank you.

1 And back on that same topic, anything on the phones
2 that supports the defendant's coercion contention?

3 MR. MOORE: Are you asking me, Your Honor?

4 THE COURT: What would be on the phones that would
5 support it?

6 MR. MOORE: We would contend that the videos were
7 on the phone. We no longer have the phone. The phones were
8 destroyed or disposed of. We have no idea exactly what
9 happened to them, Your Honor. But the contention is that
10 the videos that we were described by his wife, those were on
11 the phone, Your Honor. Several messages were on the phone,
12 Your Honor. There were tracking numbers on that phone, Your
13 Honor. There were --

14 THE COURT: Well, who are the messages you're
15 referring to? First of all, one of them seems to be put at
16 rest, and that is, there were nine scam messages that were
17 determined to be scam messages coming from either Grand
18 Canyon University or an organization related to it. And
19 there was a ninth one -- that took care of eight of them --
20 and there was a ninth one that was determined, also, to be a
21 marketing scam, a message.

22 Aside from that, what is there on the phone that
23 supports coercion?

24 MR. MOORE: The phones in which I believe you're
25 alluding to were phones that were destroyed.

1 I have no idea -- I have no idea of anything else that
2 was on the phone other than what I've been told, and what
3 Ms. Jackson has testified to, Your Honor.

4 THE COURT: Thank you.

5 Anything further on coercion?

6 If not, Mr. Wolfe are we finished with that?

7 MR. WOLFE: Yes, Your Honor.

8 THE COURT: Let's go to safety valve.

9 MR. MOORE: Your Honor, in order for a defendant
10 to be eligible -- in order for the defendant to be
11 eligible --

12 THE COURT: Try it again.

13 MR. MOORE: Your Honor, in order for the defendant
14 to be eligible for the safety valve, there are certain
15 criteria that must be met. You can't have more than -- I
16 believe it's now four.

17 THE COURT: I understand we are not dealing except
18 with one or two of those that are at issue. And what I want
19 you to do is to face that which is at issue, and one is
20 firearm.

21 MR. MOORE: Your Honor, in order to be eligible
22 under the Safety Valve Act, you can't have a firearm that is
23 associated or used in furtherance of the actual criminal or
24 drug activity in this case, Your Honor.

25 And I believe, based on the evidence presented, it's

1 quite clear that, by a preponderance of the evidence, these
2 guns were possessed -- based on the testimony taken today,
3 these guns were possessed years -- several years prior to
4 any alleged activity at all in this case, Your Honor.

5 I know that the mere presence does invoke the two-point
6 enhancement. And we accept that, Your Honor. But I also
7 know that there is a difference in terms of whether or not
8 the burden of proof -- in the burden of proof for providing
9 the Safety Valve Act versus the enhancement.

10 And in this case, it's quite clear, based upon the
11 evidence and based upon testimony given today, that these
12 guns were obtained years prior. They were held for simple
13 family activities, friend activities. For reasons that we
14 all -- I don't know about everybody, but the majority of us
15 probably have a gun due to the Second Amendment to protect
16 our home and family, Your Honor.

17 And that is what has been discussed and testified to
18 today, Your Honor.

19 At no time did Mr. Jackson possess these firearms in
20 furtherance of or in any connection actually with the drug
21 activity, other than mere presence of them being there.

22 In fact, during the entire investigation, the entire
23 investigation, Your Honor, if you look at his actual home,
24 which is in South -- I'm sorry -- South Charleston, [REDACTED]
25 Way, very rarely do you have any visitors. The apartment

1 where the majority -- or where the drugs were actually
2 stored, very rarely, if any, did he have any visitors. No
3 one was aware of his activities. There was no reason for
4 him to have guns to protect the illegal activities, Your
5 Honor.

6 In fact, he -- based on the evidence I've been given,
7 he didn't even reside at that apartment 80 to 90 percent of
8 the time. So even if the guns were there, along with the
9 drugs, he couldn't have protected the money, the drugs, or
10 anything else, because he just wasn't there. They just
11 happened to be stored in the same place, the same facility,
12 Your Honor.

13 So, I believe, based on the preponderance of the
14 evidence, that it's very easy to see that these guns were in
15 no way connected to the actual criminal activity, as often
16 is the case, Your Honor; they just happened to be there.

17 THE COURT: Is it correct that the two handguns at
18 the apartment were loaded; whereas, the rifle and the
19 shotgun and the other weapon at the residence were not?

20 MR. MOORE: Yes, Your Honor, I believe so.

21 THE COURT: Thank you.

22 Mr. Wolfe.

23 MR. WOLFE: Your Honor, the defendant's possession
24 of the two pistols at his [REDACTED] Street apartment foreclosed
25 safety valve eligibility in this case.

1 The pistols, as the Court noted, were loaded. They
2 were in a bedroom that contained pills containing controlled
3 substances, as well as a digital scale, adjacent to another
4 bedroom on the same floor with thousands of pills containing
5 a controlled substance were in that adjacent bedroom, within
6 an apartment that was used as a workshop for the defendant
7 to manufacture pills; ultimately, more than 10,000 of them,
8 and containing numerous pieces of equipment designed for
9 that purpose.

10 The handguns were certainly proximate to mountains of
11 evidence of the defendant's drug operation.

12 The witnesses that testified here this afternoon didn't
13 know anything about the defendant's drug activities. They
14 didn't discuss it with him. They had no knowledge of it
15 prior to his arrest. They didn't know how he may or may not
16 have used drugs or used guns in furtherance of his drug
17 activities.

18 And under those -- none of those witnesses could
19 specifically recall even being in the apartment within a
20 year prior to his arrest, which is when all the evidence
21 came forth of his involvement in this drug, this fentanyl
22 operation.

23 One of the common threads between all those
24 witnesses -- they testified that those guns were for
25 protection, but the defendant didn't live at the apartment.

1 He lived in South Charleston, at a different home with his
2 family, and there were guns there.

3 The defendant's choice to store these guns proximate to
4 the other drug evidence is telling, especially, since his
5 family didn't live in that apartment. That was a place that
6 he conducted his drug activities, among, perhaps, other
7 things.

8 But protection is precisely the reason why drug dealers
9 generally possess guns; and, more specifically, they often
10 possess pistols for that purpose. These were two loaded
11 pistols.

12 The case law is very clear that pistols are a tool of
13 the drug trade; that they are well-suited to close-quarter
14 self-defense, which is exactly the purpose to which these
15 loaded pistols could be readily and easily put to.

16 Also, the digital scale located in the same room as the
17 pistols is another recognized tool of the drug trade.

18 The defendant cannot show, as is his burden by a
19 preponderance of the evidence, that these guns had no
20 connection to his drug trafficking activities; therefore, he
21 doesn't qualify for the safety valve, simply because of the
22 possession of these guns, without even getting to the
23 truthfulness requirement.

24 THE COURT: Thank you.

25 Mr. Moore.

1 MR. MOORE: The fact that these handguns were
2 there, and given the fact that several people testified that
3 they were aware there were handguns in that apartment years
4 prior to the drug activity, Your Honor, does not preclude
5 him from maintaining them in that apartment, Your Honor.

6 The fact that they were loaded -- the fact -- whether
7 they were loaded or unloaded, Your Honor, it does not
8 connect him, necessarily, to the drug activity that was
9 going on in the apartment.

10 He -- I think his wife testified that they were
11 separated for some time, Your Honor.

12 So, yes, he has a right to maintain a firearm to
13 protect himself, as well as his family, and not only the
14 home in South Charleston, but in the residence in St.
15 Albans, which, apparently, he did stay there some time, and
16 at least from 2005, forward, it was his home. And he
17 always, based on the testimony, has maintained a firearm in
18 that same apartment, Your Honor.

19 So for the government to suggest that he maintained
20 those guns for the specific purpose of protecting drugs or
21 money or such is not necessarily true.

22 And even based upon a preponderance of the evidence,
23 Your Honor, it's easy to see that these guns and the drugs
24 don't necessarily have a connection; that they
25 really probably don't have a connection; that the guns

1 out -- far outdate the drug activity, Your Honor.

2 So, based upon that, I don't believe that he should be
3 denied the Safety Valve Act in this case, Your Honor. The
4 guns clearly existed for family protection, existed prior
5 to, for family protection and for innocent family and friend
6 activities, such as shooting at the Kanawha State Forest,
7 Your Honor.

8 THE COURT: Thank you.

9 Anything further, Mr. Wolfe?

10 MR. WOLFE: No, Your Honor.

11 THE COURT: The Court has not asked the
12 government, but I will now, do you have any objections to
13 the Presentence Report?

14 MR. WOLFE: No, Your Honor.

15 THE COURT: Do the parties have anything further
16 before the Court makes its findings on the issues presented?

17 MR. WOLFE: No, Your Honor.

18 MR. MOORE: No, Your Honor.

19 THE COURT: The Court finds by a preponderance of
20 the evidence that the Stipulation of Facts attached to the
21 plea agreement contains within itself a number of matters
22 which the Court makes as its findings, and they are as
23 follows:

24 As they are from the Stipulation of Facts, to which the
25 defendant has, of course, admitted by both his signature and

1 his acknowledgment at the guilty plea hearing.

2 Referring to the apartment located at [REDACTED] [REDACTED]
3 Street, in St. Albans. "On August 29, 2022, law enforcement
4 officers searched my apartment. Inside, they found various
5 quantities of pills, which I had pressed and imprinted with
6 "M30" markings to make them look like
7 legitimately-manufactured 30-milligram Oxycodone pills.
8 Some of these pills contained fentanyl, and others contained
9 Protonitazene or Butonitazene. Officers also seized
10 various quantities of powder containing these substances, a
11 large quantity of cash, two loaded pistols, pill press
12 equipment, various punch and die kits used to imprint pills
13 with "M30" markings, powder mixing equipment, and various
14 binding powders used to create pill tablets."

15 "By that date," -- being August 29, 2022 -- "I was
16 acquiring fentanyl powder from a source outside the United
17 States and commercially-manufactured binding powder from a
18 company in the United States. I had also acquired "M30"
19 punch and die sets from China. I used all these powders and
20 equipment to create pills that appeared to be legitimate
21 Oxycodone 30-milligram pills, but which, in fact, contained
22 fentanyl or similar substances."

23 "I used my apartment, primarily the basement of the
24 apartment, as a workshop for making these pills."

25 "I intended to distribute the pills that I had created

1 in my apartment. A package that I placed in the United
2 States mail on August 9, 2022, that was destined for
3 Connecticut, was intercepted by law enforcement and
4 searched. Inside the package, officers found several
5 hundred pills that I created in my apartment."

6 According to paragraphs 24 and 25 of the Presentence
7 Report, the Court will add that the pills just referred to
8 were blue tablets marked with an "M" -- or -- or, I should
9 say, marked with an "M" and the figure "30," and they were
10 designed as if they were Oxycodone, but indeed, were
11 instead, Protonitazene.

12 The Court further notes that, as a result, it concludes
13 upon finding that the defendant knowingly misrepresented and
14 knowingly marketed as Oxycodone a mixture or substance
15 containing fentanyl or a fentanyl analogue, by reason of
16 which the four-level enhancement applies.

17 The Court further finds by a preponderance of the
18 evidence that the defendant possessed the loaded Glock and
19 Smith & Wesson .40 caliber handguns found at the [REDACTED]
20 Street apartment, and did so in connection with the offense,
21 which the defendant, by counsel, has today acknowledged.

22 And that was done, the Court finds, to protect the
23 defendant himself, should he be attacked while engaged at
24 the apartment in furthering the manufacturing and
25 distribution of the tablets designed as Oxycodone, but

1 containing fentanyl. And he did so to protect his
2 possession of the fentanyl pills, and the substantial cash
3 of some \$79,000 found there.

4 Having so found by a preponderance of the evidence, the
5 Court concludes that the defendant has not qualified for
6 safety valve.

7 With that, the Court would ask the parties whether or
8 not you have anything further with respect to the findings
9 of the Court before proceeding?

10 MR. WOLFE: No, Your Honor.

11 MR. MOORE: Yes, Your Honor. The Stipulation of
12 Facts which you read, I believe, is overly broad; not
13 specific enough for you to make the findings that you've
14 made. I believe that when you read the Stipulation of
15 Facts, and discuss making and binding powders and so on and
16 so forth, I think that should be read in conjunction with
17 the statement that was given by my client and explanation
18 therewith.

19 I know you don't have those in hand, Your Honor. But
20 the assumptions --

21 THE COURT: Mr. Moore, are you talking about
22 evidence that is not in the record?

23 MR. MOORE: You're correct, Your Honor. I
24 understand your findings, and I'll accept them at this time,
25 Your Honor, but just note my objection.

1 THE COURT: Very good.

2 And there being nothing further with respect to those
3 matters, I want to turn now to the supervised release
4 conditions. Those are set forth in the Presentence Report.

5 The Court would expect to impose as conditions of
6 supervised release those conditions that, of course, are
7 mandatory, as well as the conditions that are found in
8 Administrative Office 245, as well as those conditions that
9 are standard by Local Rule, all of which are set forth in
10 the report.

11 And in addition to that, the Court would impose this
12 special condition that the defendant shall submit his or her
13 person, property, house, residence, vehicle, papers, or
14 office to a search conducted by the United States Probation
15 Officer when there is reasonable suspicion that the
16 defendant has violated a condition of supervision.

17 Prior to the search, the Probation Officer must obtain
18 approval of the search from the Court. The search must be
19 conducted at a reasonable time and in a reasonable manner.
20 Failure to submit to a search may be grounds for revocation
21 of release. The defendant shall inform other occupants that
22 the premises may be subject to searches pursuant to this
23 condition.

24 I would ask the parties whether or not you are in
25 agreement that all of those conditions of supervised release

1 that I've just referred to are appropriately adopted in this
2 instance?

3 MR. WOLFE: The United States agrees, Your Honor.

4 MR. MOORE: Defense agrees, Your Honor.

5 THE COURT: And I would ask whether or not, even
6 beyond that, Mr. Moore, do you have any question about any
7 of them?

8 MR. MOORE: I'm sorry, Your Honor. I couldn't
9 hear it all.

10 THE COURT: Pardon?

11 MR. MOORE: I could not hear your entire question.

12 THE COURT: I said, do you have any questions
13 about any of them?

14 MR. MOORE: No, no.

15 THE COURT: Thank you. And I would ask, also,
16 have you been over with the defendant all of those
17 conditions?

18 MR. MOORE: We have, Your Honor.

19 THE COURT: And, Mr. Jackson, are you agreeable to
20 them, as well?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Thank you.

23 I understand, also, that the \$100 Special Assessment
24 has been paid. Is that correct?

25 MR. MOORE: Yes, Your Honor.

1 THE COURT: And I would ask then, do the parties
2 have anything further before proceeding to hearing you with
3 respect to sentencing?

4 MR. WOLFE: Nothing at this point, Your Honor.

5 MR. MOORE: Nothing, Your Honor.

6 THE COURT: Are the parties in agreement that
7 based on the Court's findings, the Total Offense Level in
8 the case is that of 35, with a Criminal History Category of
9 I, and that yields an advisory guideline range for
10 imprisonment purposes of 168 to 210 months in this case,
11 which it carries with it, as you know, a mandatory 10-year
12 sentence, with a term of supervised release being not less
13 than five years, and as long as life?

14 Are the parties in agreement?

15 MR. WOLFE: Agreed, Your Honor.

16 MR. MOORE: We are, Your Honor.

17 THE COURT: Thank you.

18 And with that, Mr. Moore, have you anything you would
19 wish to say in the defendant's behalf?

20 I should ask you first, do you see any reason why
21 sentence should not now proceed?

22 MR. MOORE: No, Your Honor.

23 THE COURT: And, Mr. Jackson, do you see any
24 reason why sentence should not now proceed?

25 (An off-the-record discussion was held between defense

1 attorney Moore and the defendant.)

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Thank you.

4 And, Mr. Jackson, you may be seated.

5 Mr. Moore, have you anything you'd wish to say in
6 behalf of Mr. Jackson?

7 MR. MOORE: I do, Your Honor.

8 You've read my motion concerning aberrant behavior, and
9 you know exactly what it is. You probably know the
10 Sentencing Guidelines probably better than anybody in this
11 building. And I've been doing this since 1996, '97, and
12 I've never seen this many letters or this much show of
13 support for any individual.

14 THE COURT: And let me interrupt and ask, the
15 Court has received 41 letters.

16 MR. MOORE: Yes.

17 THE COURT: And I would assume the parties have
18 seen them all.

19 Mr. Wolfe, is that correct?

20 MR. WOLFE: Yes, Your Honor. I have seen that
21 number of -- sounds correct -- several letters. I reviewed
22 them.

23 THE COURT: And would the parties be in agreement
24 that all those letters be made a part of the record in this
25 case?

1 MR. WOLFE: Yes, Your Honor.

2 MR. MOORE: Yes, Your Honor.

3 THE COURT: And the Court does so.

4 Please excuse the interruption. Go ahead.

5 MR. MOORE: Your Honor, I've never seen this much
6 support for an individual in this matter, in a legal matter,
7 just period. The letters range from even incarcerated
8 individuals. I was walking in the hall, one of them gave me
9 a letter. And you have that letter, Your Honor. You have
10 members of the bar, attorneys -- more people that would fit
11 in this room. If you had called, I would have asked Mr.
12 Elliott Hicks, who is a local attorney, well-respected, who
13 would have testified as to the character of this defendant,
14 and in regards to this being his -- his behavior being
15 aberrant in nature, Your Honor.

16 And you've been a judge longer than I've been alive.
17 You've seen this situation. It's a circle. It happens over
18 and over. You've got marijuana. Oh, let's incarcerate
19 them. Then there was crack -- well, first, it was heroin,
20 and then it was crack. Let's up the guidelines, and let's
21 incarcerate them.

22 And the Sentencing Guidelines and the table has sought
23 to reduce an individual to numbers. And then we come to
24 Section 3553, which does its best to interject some humanity
25 into the situation, because we all know that overly

1 incarcerating people, it just didn't work. And it is still
2 not going to work. Period.

3 So to take a look at the guidelines, and this single
4 situation and weigh it against 42, 43 years of life that has
5 been positive, and everything a positive person could ask
6 for in his community, and say, wow, it outweighs everything
7 he has done, and everything that he stood for prior, just
8 doesn't make sense.

9 To -- if anybody -- I know you've made a decision --
10 deserved the safety valve, it's him, you know, bottom-line.

11 The requirements of 3553, you know them, so I'm not
12 going to sit here and repeat them, but I'm going to ask you
13 to take a look at the number of people who support him in
14 this room. 42 years -- 43 years of life, positive, the lack
15 of a criminal history. The over-incarceration of
16 individuals. And that's one reason that the guidelines are
17 no longer even mandatory.

18 And, you know, do what they don't do, and seek -- you
19 know, and ask for justice, some type of humanity; not how
20 many years can I put a man in jail. You know, that's not
21 what this is supposed to be about. But that's what it seems
22 to be, every time I come in this courtroom.

23 What he did was wrong. He could have hurt somebody.
24 But in a six-month investigation, he didn't make a single
25 sale.

1 It was a lot of money in that room. But just because
2 there is a lot of money in that room doesn't mean that it
3 came from anything illegal. They couldn't even attribute
4 that as relevant conduct in his PSR.

5 Simply because what happened, and the things went down
6 that didn't fit their narrative, doesn't mean that he didn't
7 tell the truth.

8 And he told the truth from the day he was arrested, and
9 he's still telling the truth today.

10 I'd ask you to take a look at those things, and his
11 prior history, his support in the community, and fashion
12 what is necessary under 3553, a sentence that is reflective
13 of all of those things, but, more importantly, who he is,
14 and the fact that this is a blip, an aberration, in the
15 otherwise stellar -- 44 -- 45 now -- 44-year life.

16 Not a single pill entered this community. And all the
17 money -- there was not a dime went into the apartment. All
18 the money went out. There was seizure of money going out;
19 nothing coming in.

20 And I guess their assumption is that he was going to
21 sell these and do this and destroy our community. It never
22 happened. He never intended for it to happen.

23 He was put in a situation in which he had to make
24 decisions and swim in a pool in which he had never been in.

25 And if that was his intent, that would have been easy.

1 I mean, 10,000 pills in a state with the highest overdose
2 rate in the United States, for him to find people to sell
3 those pills to and destroy our community, that would have
4 been simple. That would have been like giving water to
5 somebody in a desert. And he didn't do it.

6 So I think that all of that should be given weight, and
7 to far outweigh any recommendation made by some individuals
8 in some buildings that come up with numbers that have no
9 real value, other than this is what they think a person
10 should go to jail for.

11 You have the evidence of those letters. You have the
12 support of his community. And you have an opportunity to
13 weigh a man, not a number, in terms of giving him his time.

14 So with that, I'd ask you to, at the very least, give
15 him the bottom of the guidelines, and consider the fact that
16 this is aberrant behavior that he should be given credit
17 for, and fashion a sentence that will give him an
18 opportunity to come home and continue the otherwise stellar
19 life that he has lived for 44-some-odd years, raising his
20 kids and helping them.

21 THE COURT: Thank you.

22 Mr. Wolfe.

23 MR. WOLFE: Your Honor, this case was exceptional
24 in many respects. And some of them Mr. Moore has already
25 mentioned. Some positive, some negative.

1 The defendant, undoubtedly, has a lot of support.
2 There is no debate about that.

3 And that will certainly help him when he is released.
4 He also has no meaningful prior run-ins with law enforcement
5 before this case. And it's somewhat exceptional to see
6 somebody well into their 40s getting involved in drug
7 trafficking at this level with no history of the same.

8 At the same time, this case is also exceptional in
9 terms of the operation the defendant had built in his
10 apartment; the complexity of the equipment he had gathered;
11 the number of pills he accumulated, that were seized when an
12 officer searched that apartment, over 10,000 of them.

13 The evidence in this case, as summarized in the PSR,
14 speaks of an operation that lasted for several months. This
15 case is also exceptional in terms of the efforts of law
16 enforcement, specifically, the DEA, that prevented those
17 10,000-some pills from entering into this community or
18 others like it.

19 And it's well-known throughout the country that these
20 pills containing fentanyl, bearing the "M30" markings, have
21 caused overdoses throughout the country. And I cited to
22 some examples of that and various district court's decisions
23 in the United States Sentencing Memorandum.

24 This case is also exceptional in terms of the need for
25 this sentence to deter not only this defendant, but others.

1 This is a unique case. I've never seen a case where
2 somebody locally was involved in pressing pills containing
3 fentanyl.

4 I'm certainly aware of many instances of those pills
5 being seized in this district. And certainly fentanyl is an
6 issue in this district that dwarfs any previous drug issue
7 this district has confronted, marijuana, cocaine, crack
8 cocaine, methamphetamine -- none of those substances cause
9 death at the rate at which fentanyl has caused death here
10 and elsewhere.

11 This case involved a substantial amount of fentanyl in
12 a form that was particularly deadly, given the misleading
13 markings on the pills, the number of overdoses that pills
14 likely have caused throughout the country.

15 Those pills, had law enforcement not intervened, would
16 have entered into the stream of commerce at some point,
17 whether by the defendant's hands or somebody else's. He did
18 not make them to use them. They were made with the intent
19 that somebody down the line would use them. And perhaps
20 many deaths were prevented by these pills being seized.

21 That conduct needs to be deterred. Any time somebody
22 is selling fentanyl, it needs to be deterred. But
23 possessing with intent to distribute, as the defendant has
24 admitted, this many fentanyl pills, each one being, in
25 effect, a wolf in sheep's clothing, given the marking, could

1 have caused countless deaths.

2 Deterrence is paramount. The need to craft a sentence
3 commensurate with the seriousness of this offense is
4 paramount. The need to impose a sentence that constitutes
5 just punishment is paramount.

6 This was a very serious offense. It could have caused
7 countless deaths. A sentence should be certainly within the
8 guideline range, near the top of that range, to match the
9 seriousness of the offense, and the other sentencing
10 factors, Your Honor.

11 THE COURT: Thank you.

12 Mr. Moore, in light of the government's comments, have
13 you anything further?

14 MR. MOORE: Well, yeah. I guess it could have
15 happened. But the point is, it didn't happen. And it
16 wasn't going to happen. It just -- as I said earlier, if he
17 had intended to sell these in this community, it's like
18 taking water to the desert. Half of our valley would have
19 been dead. But he didn't.

20 This is a six-month investigation. They don't have a
21 single person he sold to. Not one.

22 They questioned about the large amounts of money at the
23 house. But the only money they ever retrieved was money
24 going out; not going in.

25 When they say he pressed these pills -- he pressed some

1 of them, but they know the rest of the story. And I don't
2 think they're giving you the full story.

3 It's not necessary to give him a sentence anywhere near
4 that which is suggested -- the guideline range suggested
5 for him, to understand that what he did was wrong. He
6 understands now.

7 If the government felt that he was such a threat that
8 he needed that much time in jail -- he was arrested a year
9 prior to them ever indicting him. He was free. They let
10 him go. They arrested him and let him go.

11 Nothing happened. He didn't commit a single crime. He
12 didn't go anywhere without asking. They were even in
13 agreement that when you took him into custody that he could
14 remain free on bail.

15 So by their own actions, they admit that he probably
16 has learned his lesson, and he doesn't need such a strenuous
17 sentence, Your Honor.

18 Based upon that, and his character, and his -- and
19 evidence presented, which does not show him selling anything
20 or being a danger to the community -- I know they are going
21 to argue that the mere possession of, which is dangerous.
22 It was. It was dangerous to him, because he didn't give it
23 to anyone else.

24 He accepted that responsibility himself, Your Honor.

25 And, you know, based upon that, I'd ask you to fashion

1 a sentence based upon the man, and not the numbers, you
2 know. And he'd argue that this -- nobody -- nobody --
3 people have -- we haven't had as many deaths from any other
4 drug than due to fentanyl.

5 I was here during the crack epidemic. They made the
6 same argument. So what he's asking for you to do is
7 over-sentence a person based on a societal situation, rather
8 than who he is, Your Honor.

9 THE COURT: Thank you.

10 Mr. Jackson, have you anything you'd wish to say in
11 your own behalf, whether by way of mitigation of punishment
12 or otherwise?

13 THE DEFENDANT: Yes, Your Honor, I would like to
14 speak.

15 THE COURT: Speak straight out.

16 THE DEFENDANT: Your Honor, there has been some
17 statements made here that I brought it -- and I didn't agree
18 to. I sat down with them a little bit ago, and I tried to
19 clear some things up. I did not intend to sell a single
20 pill, sir. I was under the threat of the Mexican cartel
21 from Arizona. They wanted me to sell the pills.

22 I refused, because I know the damage that they do.
23 There is no way that I could look my family in the face and
24 say that I sold somebody pills, and that person died. I
25 cannot do that, sir. There is no way.

1 I put my own life at risk to save other lives. There
2 were 10,000 pills, yes. They were multiple packages sent to
3 me. And I refused to sell a single pill. I can't do that,
4 sir. It's not my character.

5 I accept responsibility for my actions.

6 My family has suffered greatly. My conscious -- my
7 conscious cannot allow me to just sit here and be silent
8 while they just try to slander me, sir. Like, I'm not that
9 person. They're making me out to be a monster. And I'm not
10 a monster.

11 As I said before, I had no intention to sell a single
12 pill, and I did not sell one single pill.

13 I possessed them, yes, but I never -- there was never a
14 time when I was going to distribute them. Never.

15 I want to apologize to my family.

16 Even under the threat of violence, I should have
17 remembered who I am. Most importantly, I should have
18 remembered whose I am.

19 I want to apologize to my church community. I should
20 have trusted in the Lord with all my heart. I should not
21 have left it to my own understanding and should not have
22 tried to take this on by myself.

23 I want to apologize to my fellow Freemasons, and my
24 fellow good Brothers of Omega Psi Phi. Between those
25 organizations, I should have found somebody to confide in,

1 no matter the repercussions.

2 I want to apologize to my beautiful, wonderful wife, my
3 strong, handsome, oldest son, and my bonus son, my youngest
4 son.

5 You know, I thought that as long as I didn't sell any
6 pills, that no family or no community would be affected.

7 I now understand that's the furthest thing from the
8 truth, for my family was affected greatly because of that.

9 You know, in 42 years, I didn't commit any crime. I
10 tried to live a good life, one where my kids could emulate
11 and be proud of their father.

12 And rest assured, nothing like this will ever happen
13 again.

14 Honestly, Judge, I really don't know what more I could
15 have done. I thought I did all I could do. I saved my life
16 and I saved countless other lives by not inflicting pain and
17 hurt, evil and death, on my community. Again, I sacrificed
18 my life. And I thought it was going to end.

19 And honestly, I would rather that happen than me sell
20 drugs, especially those fentanyl pills, and my family have
21 to look at me in shame. I would rather have faced death
22 than that.

23 I want to thank everybody here for supporting me. You
24 all know me. And I appreciate the love.

25 Your Honor, Mr. Wolfe, Mr. Fidler, Mr. Thompson, I

1 humbly, and would --

2 THE COURT: Thank you, sir.

3 THE DEFENDANT: I'm not done. I humbly, and with
4 the utmost and deepest respect, ask you all to allow me to
5 return to my family.

6 I am so sorry. But God is still good.

7 THE COURT: Thank you, Mr. Jackson.

8 Mr. Jackson, the magnitude of your manufacturing and
9 distribution of pills containing fentanyl disguised as
10 Oxycodone is extraordinary. Paragraph 36 of the Presentence
11 Report reflects the seizure, likely, on August 29, 2022, of
12 a total of 1,060 grams of fentanyl in products that are
13 either fentanyl or laced with fentanyl.

14 That equates to one-million, sixty-thousand milligrams.

15 In your conversation with an individual named Erin,
16 from whom you were attempting to buy fentanyl, on April 8,
17 2022, Erin warned you that, and I quote, "If you use too
18 much, you'll die," end quote.

19 To which you responded: "Understood."

20 Erin then said, "2 milligrams can kill adults."

21 To which you again responded: "Understood."

22 But we know you shipped out your poisonous product,
23 nevertheless, as indicated by the August 9, 2022 seizure of
24 the parcel that was headed for Connecticut.

25 And so, the gravity of the offense is immense.

1 You seem regretful, but you don't seem to appreciate
2 what you've done.

3 THE DEFENDANT: Can I just -- I don't mean to
4 interrupt, Your Honor. May I address that?

5 THE COURT: Please go ahead.

6 THE DEFENDANT: Okay. Your Honor, I didn't -- I
7 did not manufacture -- I did not manufacture the -- the
8 scope that they were talking about, sir. That was not me.

9 The conversation that was taking place with Ms. Erin,
10 that was navigated through the cartel. That was a
11 screenshot that they gave me to try to get that. I never
12 received anything like that. I did not -- I did not press
13 any fentanyl pills, sir. I did not do that.

14 THE COURT: Thank you.

15 Anything further?

16 THE DEFENDANT: As far as the package, yes, sir, I
17 sent the package out, but they told me to send that package
18 out. They gave me an address to send that to and the return
19 address. The return address was the apartment next to my
20 grandmother's house. I did not receive any money for that,
21 Your Honor. Like, no; no, sir. That is not how that
22 happened.

23 I did not -- I did not manufacture 10,000 pills, sir.
24 I did not.

25 I received those. I received those pills in the mail.

1 I did not manufacture those, sir.

2 THE COURT: Continuing, the Court notes, as well,
3 your willingness, indeed, eagerness to be involved in this
4 conduct is reflected over the text of conversations
5 intercepted during what looks to be a period of about eleven
6 months, when you may have been engaged in gathering together
7 the elements that permitted you to go through this conduct.
8 Those conversations uniformly appear to be one of desire to
9 accomplish a given end. They do not reflect fear or
10 concern.

11 And so the Court necessarily takes all that into
12 account in determining the sentence that should be imposed
13 in this matter.

14 On the other hand, I recognize that until you commenced
15 engaging in this conduct, you had led a very productive
16 life.

17 You are highly respected. Indeed, we have a number of
18 individuals here, such that it overflows the Court's
19 capacity here in your behalf.

20 That was true, as well, of the some 41 messages that I
21 received in your behalf.

22 Uniformly, those messages reflect a kind and generous
23 individual, who has given much to your community, and
24 expressed your love in many, many ways, in aid to you,
25 friends, and family, and church and community.

1 And so the Court necessarily takes that into account.
2 And it's reflected, as well, by the fact you have no
3 criminal history.

4 When the Court takes all of those factors into
5 consideration, and noting that the advisory guideline range
6 is that of 168 months to 210 months, and, of course, as you
7 must know, you're faced, in any event, with a mandatory
8 minimum of 10 years' imprisonment, the Court undertakes to
9 fashion a sentence that takes into account your personal
10 characteristics, the characteristics of the offense. The
11 Court, of course, undertakes to impose a sentence that will
12 protect the public from further criminal conduct on your
13 part, as well as one that will deter others, including you
14 from engaging in like conduct.

15 And I would pause to note that the Court believes that
16 you must have learned your lesson from this unfortunate
17 experience, and that it's unlikely that you will engage in
18 further criminal conduct once released.

19 The Court takes into account, as well, all of the
20 facets of your life, as reflected not only in those letters,
21 but to some extent in this Presentence Report, as well. And
22 I've concluded the sentence that the Court will reach, which
23 I'll note in a moment.

24 The Court also is going to place you on supervised
25 release for a period of five years. And the Court will make

1 the conditions of that supervised release all those terms
2 and conditions that have already been considered, and that
3 is, all of the terms and conditions that are mandatory, all
4 the terms and conditions that are expressed in A0245, and
5 all of the terms and conditions that are expressed in the
6 Local Rules of Criminal Procedure, and the additional
7 condition that I've read to you during the course of this
8 hearing.

9 In returning to the sentence to be imposed in this
10 matter, the Court finds that a sentence that is sufficient
11 but not greater than necessary is one that takes into
12 account the thoughtful and compassionate sentiments that are
13 expressed in all these many letters that I have received,
14 and takes into account, as well, the exceptional number here
15 in your behalf today, which shows what great confidence and
16 faith these people have in you.

17 In doing that, I've concluded that a sentence that is
18 sufficient but not greater than necessary is one that is at
19 the bottom of the guideline range of 168 months.

20 And the Court will impose a sentence of 168 months,
21 along with the five-year term of supervised release.

22 There have been forfeited some \$144,000 so far, as well
23 as the weapons. The Court finds that that has apparently
24 stripped you of your assets. The Court will not impose a
25 fine.

1 The \$100 Special Assessment is imposed, but it's
2 already been paid.

3 And with that, I would ask the parties whether or not
4 you have anything further?

5 MR. WOLFE: No, Your Honor.

6 MR. MOORE: I'd ask the Court to reconsider the
7 sentence and give him no more than the mandatory minimum
8 necessary, Your Honor.

9 THE COURT: There being nothing further, the Court
10 adheres to the sentence that it has imposed, and would note
11 to you, Mr. Jackson, that you have 14 days from today within
12 which to appeal your conviction and the sentence that the
13 Court's imposed.

14 And I believe, Mr. Moore, you've been retained. Is
15 that correct?

16 MR. MOORE: Volunteered, Your Honor.

17 THE COURT: But, in any event, you are not
18 appointed counsel; is that correct?

19 MR. MOORE: No, I'm not, Your Honor.

20 THE COURT: And so, I would simply note to you
21 that, Mr. Jackson, that if you wish to appeal and are
22 without funds with which to engage counsel to do so, you may
23 apply to the Court to proceed without payment of counsel,
24 and appointed counsel will be designated for you.

25 The Court would note to you that you have 14 days from

1 this date within which to appeal the conviction and sentence
2 in this case. And, again, if you're without funds with
3 which to engage an attorney for that purpose, then upon your
4 request, counsel will be appointed to represent you without
5 expense to you.

6 And with that, I would simply note to you that the
7 Court wishes you well.

8 Thank you.

9 THE CLERK: All rise.

10 (Proceedings concluded at 4:01 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Catherine Schutte-Stant, Federal Official Realtime Court Reporter, in and for the United States District Court for the Southern District of West Virginia, do hereby certify that, pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

s/Catherine Schutte-Stant, RDR, CRR

November 27, 2024

Catherine Schutte-Stant, RDR, CRR
Federal Official Court Reporter

REDACTION CERTIFICATE

I certify that the foregoing is a true and correct copy of the transcript originally filed with the Clerk of Court on November 27, 2024, and incorporating redactions of personal identifiers requested by the following attorney of record: Jonathan D. Byrne, in accordance with Judicial Conference policy. Redacted characters/pages appear as a black box in the transcript. Date: January 23, 2025.

/s/ CATHERINE SCHUTTE-STANT, RDR, CRR

CATHERINE SCHUTTE-STANT, RDR, CRR
FEDERAL OFFICIAL COURT REPORTER